UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,562	03/23/2004	David L. Marvit	073338.0190 (04-50462 FLA	4041

5073 7590 07/22/2010

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED: 07/22/2010

Please find below and/or attached an Office communication concerning this application or proceeding.

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 3/31/10. The submission, however, is not fully responsive to the prior Office action because the newly amended claims 21 and newly added claims 22-41 are directed to a different invention, claim 21 was withdrawn from consideration based on election by original presentation, note final rejection dated 12/31/09. Applicant has cancelled all claims 1-20 directed to invention that was previously examined. Hence there is no claims directed to the original invention to be examined. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

Election/Restrictions

Newly submitted claims 21-41 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: see restriction below.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-41 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-20, drawn to a device and a method for remotely controlling device comprising determining a matching gesture by comparing the tracked movement against the remote command gestures, classified in class 345, subclass 158.

II. Claims 21-41, drawn to a handheld device generate the current image using the first, second accelerometers and tilt detection component, classified in class 345, subclass 157.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as determining a matching gesture by comparing the tracked movement against the remote command gestures without a tilt detection component comprising a camera, video analysis module and a range finder as in invention II. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

/Regina Liang/

Primary Examiner, Art Unit 2629